

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 45-003-13-1-5-00159-16  
45-003-14-1-5-01204-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-427-009.000-003  
**Assessment Years:** 2013 and 2014

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**PROCEDURAL HISTORY**

1. Nowacki contested the 2013 and 2014 assessments of his property located at 2509 Jennings Street in Gary. The Lake County Property Tax Assessment Board of Appeals (“PTABOA”) issued determinations valuing the vacant lot at \$4,600 for both years.
2. Nowacki filed Form 131 petitions with the Board and elected to proceed under our small claims procedures. On October 15, 2018, Ellen Yuhan, our designated administrative Law Judge (“ALJ”), held a hearing on Nowacki’s petitions. Neither she nor the Board inspected the property.
3. Nowacki appeared pro se. The Assessor appeared by Robert W. Metz and Gordona Bauhan, his Hearing Officers. They were all sworn as witnesses.

**RECORD**

4. The official record for this matter contains the following:
  - a. Petitioner Exhibit 1: Property Record Card (“PRC”) for 2008-2013  
Petitioner Exhibit 2: PRC for 2009-2014
  - b. Respondent Exhibit A: PRC for 2008-2015
  - c. The record for this matter also includes the following (1) all pleadings, briefs, motions, and documents filed in this appeal; (2) all notices and orders issued by the Board or our ALJ; (3) an audio recording of the hearing; and (4) these Findings and Conclusions.

## BURDEN OF PROOF

5. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Ind. Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances----where the assessment under appeal represents an increase of more than 5% over the prior year's assessment, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I.C. § 6-1.1-15-17.2(b) and (d). If the assessor has the burden of proof and fails to meet it, the assessment reverts to the previous year's level or to another amount shown by probative evidence. I.C. § 6-1.1-15-17.2(b).
6. Here, there was no change in the property's assessment from 2012 to 2013. Nowacki therefore bears the burden of proof for 2013. The burden for 2014 depends on the outcome of the 2013 appeal.

## SUMMARY OF CONTENTIONS

7. Nowacki's case:
  - a. The property is similar to the previously appealed property at 4229 W. 27<sup>th</sup> place. It is in an area that does not appear to have any potential for residential development under any foreseeable circumstances. *Nowacki testimony.*
  - b. The Assessor's office has to take into consideration the zoning of the property. In this case, where the characteristics of the neighborhood do not lend themselves to residential development, it would be beneficial if the city were to change the zoning on the lots. If the zoning were changed to allow property owners to put together a package that has some marketability, it would increase value. *Nowacki testimony.*
  - c. To a large degree the actual market of the property is determined in an arm's-length transaction between a willing seller and a willing buyer, neither under any pressure to buy or sell. These lots were sold at the commissioners' sale and were available to hundreds of eligible and capable bidders. This is an arm's-length transaction. *Nowacki testimony.*
  - d. This property was in the county's inventory for 25 years, probably coming before the public time and time again. At no time did any willing buyers present themselves at the auction to pick up a quick \$4,500. None of the bidders saw the property as being worth the assessed value or they would have bid on it. He acquired the property for \$141, so the assessment is obviously incorrect. *Nowacki testimony.*
  - e. The Assessor has lowered the property's value for subsequent years, but not to the amount needed for the 2013 and 2014 appeals. Nowacki requests a valuation of \$2,600 for both years. *Nowacki testimony.*

8. The Assessor's case:
  - a. The Assessor contends Nowacki has presented no evidence, and there is nothing to rebut. *Bauhan testimony*.

#### ANALYSIS

9. Nowacki failed to make a prima facie case for a reducing the property's 2013 or 2014 assessments. The Board reached this decision for the following reasons:
  - a. The goal of Indiana's real property assessment system is to arrive at an assessment reflecting the property's true tax value. 50 IAC 2.4-1-1(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 3. "True tax value" does not mean "fair market value" or "the value of the property to the user." I.C. § 6-1.1-31-6(c), (e). It is instead determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value in use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL at 2.
  - b. All three standard appraisal approaches—the cost, sales-comparison, and income approaches—are "appropriate for determining true tax value." MANUAL at 2. In an assessment appeal, parties may offer any evidence relevant to a property's true tax value, including appraisals prepared in accordance with generally recognized appraisal principles. *Id.* at 3; *see also Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006) (reiterating that a market value-in-use appraisal that complies with the Uniform Standards of Professional Appraisal Practice is the most effective method for rebutting the presumption that an assessment is correct). Regardless of the appraisal method used, a party must relate its evidence to the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, the evidence lacks probative value. *Id.* The valuation date for the 2013 and 2014 assessments at issue was March 1 of each respective assessment year. Ind. Code § 6-1.1-2-1.5(a).
  - c. Nowacki contends the property's 2013 assessment should be \$2,600, but he failed to present any probative market-based evidence to support that value. Nowacki did offer some general statements about how the property's residential zoning negatively affects the property, but statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. To the extent Nowacki was asserting that his purchase price of \$141 reflects the property's correct value, we disagree. The purchase price of a property can be the best evidence of a property's value. *Hubler Realty Co. v. Hendricks Co. Ass'r*, 938

N.E.2d 311, 315 (Ind. Tax Ct. 2010). Here, however, Nowacki failed to prove that the commissioner's sale met the requirements of an open market transaction. Nor did he attempt to relate the purchase price to the relevant valuation date. Consequently, the purchase price is not probative evidence of the property's market value-in-use.

- e. Because Nowacki offered no probative market-based evidence to demonstrate the property's correct market value-in-use for 2013, he failed to make a prima facie case for a lower assessment. Where a Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).
- f. Because Nowacki failed to make a prima facie case for reducing the property's 2013 assessment, its assessment remained unchanged from 2013 to 2014. Nowacki therefore retains the burden of proof for 2014. Nowacki relied on the same evidence and arguments for 2014, and we therefore reach the same conclusion—he failed to make a prima facie case for a lower assessment.

#### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, we find for the Assessor and order no change to the property's 2013 and 2014 assessments.

ISSUED: January 11, 2019

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

**- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.